

source owner or operator must demonstrate:

(1) That the source owner or operator or an affiliated entity in no manner sought, caused, encouraged or contributed to the inability; and

(2) That the source owner or operator in no way unduly delayed negotiation for needed equipment or fuel supply or made unusual demands not typical in its industry, or placed unusual restrictions on the supplier, or delayed in any other manner the delivery of goods or the completion of the necessary construction.

(d)(1) No exemption will be granted pursuant to paragraph (a)(4) of this section unless the owner or operator of the source demonstrates that, with respect to a situation described in paragraph (c), all reasonable steps were taken to prevent the situation causing the inability to comply, that procuring the needed pollution control equipment or fuel supply was given and continues to be given the highest possible priority in the planning and budgeting process of the owner or operator of the source, and that alternative sources of equipment and fuel have been explored without success.

(2) Any exemption granted under paragraph (a)(4) of this section shall cease to be effective when the inability to comply ceases to be entirely beyond the control of the source owner or operator as defined in this section.

(e) Except in the case of exemptions based on orders under section 113 (d)(4) or (d)(5) or suspensions under section 110(g), the Administrator may grant an exemption with retroactive effect to the date of the event giving rise to the section 120 predicate order, extension, suspension, or consent decree. In such cases, the exemption from the noncompliance penalty shall run from the date that the basis for the exemption first occurred.

[45 FR 50110, July 20, 1980, as amended at 50 FR 36734, Sept. 9, 1985]

#### § 66.32 De Minimis exemptions.

(a) The Administrator may, upon notice and opportunity for public hearing, exempt the owner or operator of any source from a penalty where he finds that a particular instance of non-

compliance was *de minimis* in nature and duration.

(b) A petition for an exemption on the ground that the violation described in a notice of noncompliance was *de minimis* in nature and duration may only raise issues related to entitlement to an exemption and shall contain or be accompanied by supporting documentation. Issues relating to entitlement to a *de minimis* exemption not raised in the petition shall be deemed waived.

(c) In ruling upon such a petition, the Administrator shall consider:

(1) The magnitude of the excess emissions and whether the source's noncompliance is recurring or persistent;

(2) The steps the source owner or operator is taking to eliminate the cause of the excess emissions and to minimize such emissions;

(3) Whether any significant economic savings are likely to accrue to the owner or operator of the source as a result of the noncompliance;

(4) The character of the emissions, and their impact on ambient air quality; and

(5) The duration of the violation.

(d) A hearing on a petition for a *de minimis* exemption shall be informal. The hearing shall be scheduled upon notice to the public. Reasonable opportunity to testify and for submission of questions by the public to the petitioner shall be afforded. The decision of the hearing officer will be made in writing within a reasonable period of time after the close of the hearing.

#### § 66.33 De Minimis exemptions: malfunction.

(a) The Administrator may, upon notice and opportunity for a public hearing, exempt the owner or operator of a source if he finds with respect to a particular instance of noncompliance, that such noncompliance was *de minimis* in nature and duration, and was caused solely by a sudden and unavoidable breakdown of process or pollution control equipment.

(b) A petition for an exemption on the ground that the violation was *de minimis* and was caused by a sudden and unavoidable breakdown of process or pollution control equipment may only raise issues related to entitlement to